

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BETTE J. FOSTER

Plaintiff,

-vs-

THE HUMANE SOCIETY OF ROCHESTER and
MONROE COUNTY, INC.; LOLLYPOP FARM

Defendant.

COMPLAINT

Civ No.:

JURY DEMAND

Trial by jury on all issues herein is demanded.

PRELIMINARY INTRODUCTION

1. This is an action brought to address discrimination on the basis of sex in violation of Title VII of Civil Rights Act of 1964 and discrimination on the basis of age in violation of 29 U.S.C. Section 621 *et. seq.*, the Age Discrimination in Employment Act (hereinafter "ADEA") as amended (covers ages 40 years of age or older in employment).

ADMINISTRATIVE EXHAUSTION

2. Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") on August 10, 2009 alleging discrimination on the basis of age and sex/gender, and hostile work environment on the basis of sex/gender. A Right to Sue Notice was issued by the EEOC on August 20, 2009. Less than ninety (90) days have

elapsed since the Plaintiff's receipt of that notice and her subsequent filing of the original complaint in this matter.

JURISDICTION AND VENUE

3 Jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1331 and 1342, 42 U.S.C. § 2000(e), 29 U.S.C. §621, *et seq.*, 29 U.S.C. § 1331, 29 U.S.C. §§ 206 and 216; the Court also has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 to adjudicate Plaintiff's claims under state law.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

PARTIES

5. Plaintiff is an individual woman who for all relevant times herein was an employee of defendant and was over the age of forty. Plaintiffis has and is a resident of the County of Monroe, State of New York.

6. Upon information and belief, the Defendant is a non-for-profit corporation organized and operating under the laws of the State of New York, has its principal place of business in the County of Monroe, State of New York, and does business in the State of New York.

FACTUAL BACKGROUND

7. Plaintiff is a woman born on March 29, 1963.
8. Defendant is a not-for-profit corporation who relies on client donations to operate and succeed.
9. Plaintiff began her employment with defendant on September 10, 2008.
Plaintiff was hired as a Manger of Resource Development.
10. One of Plaintiff's job functions with defendant was to establish a working relationship with corporate clients as well as contact clients for donations through sponsorships to Lollypop Farm.
11. Throughout the entirety of her work history with defendant Plaintiff as maintained an above average work history. In fact, Plaintiff was commended for her fund raising successes, for obtaining clientele for sponsorships and her work during the preparation for a Telethon in February of 2009.
12. Catherine Wright ("Director Wright") is the Director of Development and during Plaintiff's employment with defendant was her immediate supervisor.

13. During Plaintiff's employment with defendant she became aware that defendant's President Alice Calabrese Smith ("President Alice"), who is married to Greg, was having a relationship with one of defendant's largest event sponsors Dylan who was also married.
14. Plaintiff was burdened with the responsibility to keep President Alice's relationship in hiding. Plaintiff did not tell her peers or her supervisor, and there was no Human Resources representative on staff.
15. Part of Plaintiff's job function with defendant was to provide sponsors with previously agreed upon marketing benefits. President Alice frequently asked Plaintiff to provide items and services over and above the agreement.
16. Through Dylan's personal assistant Marcie Wright and President Alice, Dylan was in constant contact with Plaintiff and gave Plaintiff his ideas regarding how events should be run and how Plaintiff should spend her time getting donations for defendant.
17. Plaintiff was encouraged to work other sponsors to gain donations-such as the suggestion to get a car dealership to donate a car for a raffle-and create events that Dylan could be involved in, such as a touch football event and

a euchre tournament.

18. President Alice also suggested that Plaintiff plan and Dylan's personal assistant Marcie's bachelorette party.
19. These responsibilities being placed upon Plaintiff were unrealistic and outside of her job responsibilities, and directly impacted Plaintiff's ability to do her job.
20. During this time, Dylan was adamant about how events should be run, and he had a larger than normal level of participation in the events, Telethon and Warm Up Walk. His involvement was always intrusive and very critical on details.
21. Whenever Plaintiff tried to curb Dylan's involvement, Alice would usurp Plaintiff's decisions and allow Dylan, a non-employee of defendant, to get his way.
22. While Dylan did pay for extra costs, his involvement was a large drain on Plaintiff's productive time to perform her responsibilities.
23. In addition to keeping up with Dylan's ideas, Plaintiff had to be extremely

flexible with her schedule just for Dylan and his requests.

24. Dylan was not reliable with respect to his time commitments, and meetings with Dylan would be cancelled or plans would be changed. This was not unusual for a successful business man but it created a situation where Plaintiff had to spend several hours a day re-scheduling.
25. Events Coordinator Debra Calandrillo ("Coordinator Calandrillo") reported directly to Plaintiff.
26. Coordinator Calandrillo took issue with Plaintiff, as well as other management including Director Wright. Coordinator Calandrillo has numerous issues even prior to Plaintiff's arrival.
27. Plaintiff complained to her supervisor numerous times concerning Coordinator Calandrillo's behavior, however, no remedial action was taken.
28. Instead, Director Alice and Plaintiff's supervisor would undermine her management of Coordinator Calandrillo.
29. Coordinator Calandrillo then approached Plaintiff and said that she was

going to threaten Dylan that if he did not give her the funding and resources for a certain fund raising event that she would tell his wife about his relationship with President Alice.

30. On May 8, 2009, Plaintiff approached Director Alice and informed her of Coordinator Calandrillo's threat.

31. On May 11, 2009, Plaintiff told her immediate supervisor that she was still having numerous issues with Coordinator Calandrillo.

32. Plaintiff's supervisor suggested a meeting with Linda Baird, the VP at the Democrat & Chronicle, to assist with human resource management. Baird is renown in the community for superior management.

33. Plaintiff was told by her supervisor on May 12, 2009, that she wanted to meet with Plaintiff regarding her performance after the meeting.

34. On May 13, 2009, a meeting was had with Plaintiff, her supervisor and Linda Baird. It was recommended by Linda Baird that Coordinator Callandrillo be put under performance review and be given conditions of employment, which, to Plaintiff's knowledge, never happened. At that meeting, Plaintiff's supervisor told her that President Alice was concerned

about Plaintiff's performance.

35. Plaintiff was given a plan of action, which was later outlined in an Interoffice Memorandum.
36. On May 29, 2009, Plaintiff confided in her supervisor what she knew about President Alice and Dylan's relationship, including how it was affecting Plaintiff's work.
37. Plaintiff's supervisor agreed that what was going on was wrong on "sooooo many levels."
38. Plaintiff then expressed concern that President Alice may fire her because of the situation.
39. On May 30, 2009, Plaintiff expressed her concerns in an e-mail to her supervisor that she felt, in good faith, that she was subject to a hostile work environment.
40. On June 3, 2009, Plaintiff was called into her supervisor's office and told that her services were no longer needed.

**FIRST CAUSE OF ACTION
Discrimination in Employment
Violation of ADEA**

38. Plaintiff repeats and incorporates by reference the allegations stated above of the Complaint as if they were set forth in full herein.
39. Defendant, through its agents, engaged in a pattern of unlawful age discrimination by subjecting Plaintiff to discrimination based on age in violation of the ADEA, as amended (covers ages 40 years of age or older in employment), by singling out Plaintiff in regards to her job performance when in fact Plaintiff's job performance was satisfactory or better than those employee younger than Plaintiff, and the employment practices of defendant described above harm older employees of the defendant and favor younger employees. The practices so described are not based upon a reasonable factor other than age.
40. Defendant has purposefully engaged in age discriminatory practices with the full knowledge that in so doing it was discriminating against its older employees, without regard for the rights of those employees under the ADEA.
41. Defendant discriminated against Plaintiff's employment on account of her age and thereby violated his right to equal employment opportunity as protected by the ADEA

42. As a direct and proximate result of defendant's willful, knowing and intentional discrimination against her, Plaintiff has suffered a loss of reputation and will continue mental anguish and emotional anguish and emotional distress; she has suffered and will continue to suffer a loss of earnings and other employment benefits and job opportunities. Plaintiff is thereby entitled to general and compensatory damages in amounts to be proven at trial.
43. As a further and proximate result of defendant's violations of the ADEA, Plaintiff has been compelled to retain the services of counsel in an effort to enforce the terms and conditions of the employment relationship with defendant and each of them, and has thereby incurred and will continue to incur, legal fees and costs, the full nature and extent of which are presently unknown to the Plaintiff. Plaintiff requests that attorney fees be awarded.
44. Plaintiff is informed and believes, and based thereon alleges, that the outrageous conduct of defendant described above was done with fraud, oppression and malice, with conscious disregard for her rights, and with the intent, design, and purpose of injuring her. Plaintiff is further informed and believes that defendant authorized, condoned and/or ratified the unlawful conduct alleged herein, specifically. By reason thereof, Plaintiff is entitled to punitive or exemplary damages from all defendants

in a sum to be adduced at trial.

**SECOND CAUSE OF ACTION
Retaliation in Violation of the ADEA**

45. Plaintiff repeats and re-alleges by reference each and every allegation contained in the above stated paragraphs and incorporates the same herein as though fully set forth.
46. The ADEA prohibits retaliation against employees for complaining about age discrimination. Plaintiff engaged in protected activity under the ADEA by complaining about her treatment at work and hostile work environment, Plaintiff was placed on a performance improvement plan in retaliation for her complaints, and was given no help or guidance by her supervisor or any other management of defendant.
47. As a direct and proximate result of defendant's willful, knowing and intentional discrimination against her, Plaintiff has suffered a loss of reputation and will continue to suffer mental anguish and emotional anguish and emotional distress; she has suffered and will continue to suffer a loss of earnings and other employment benefits and job opportunities. Plaintiff is thereby entitled to general and compensatory damages in amounts to be proven at trial.

48. As a further and proximate result of defendant's violations of ADEA. Plaintiff has been compelled to retain the services of counsel in an effort to enforce the terms and conditions of the employment relationship with defendant and each of them, and has thereby incurred and will continue to incur, legal fees and costs, the full nature and extent of which are presently unknown to the Plaintiff; Plaintiff requests that attorney fees be awarded.

49. Plaintiff is informed and believes, and based thereon alleges, that the outrageous conduct of defendant described above was done with fraud, oppression and malice, with conscious disregard for her rights, and with the intent, design, and purpose of injuring her. Plaintiff is further informed and believes that defendant authorized, condoned and/or ratified the unlawful conduct alleged herein, specifically. By reason thereof, Plaintiff is entitled to punitive or exemplary damages from all defendants in a sum to be adduced at trial

THIRD CAUSE OF ACTION
Violation of NYSHRL based on Age Discrimination

50. Plaintiff repeats and re-alleges by reference each and every allegation contained in the above stated paragraphs, and incorporates the same herein as though fully set forth.

51. Defendant through its agents engaged in a pattern of unlawful age discrimination based on age and failed to take remedial action with regards to Plaintiff's complaints of discrimination by singling out Plaintiff in regards to her job performance, when in fact Plaintiff's job performance was satisfactory or better than those employees who were substantially younger than Plaintiff, and eventually terminating Plaintiff in violation of the New York State Human Rights Law, (hereinafter referred to as "NYSHRL"), Executive Sections 290 *et seq* . This claim does not raise a novel or complex issue of law.
52. Defendant at all times relevant herein had actual and constructive knowledge of the conduct described above.
53. As a result of the discrimination perpetrated and maintained by defendant and to Plaintiff, and their failure to protect the Plaintiff from discrimination, Plaintiff suffers emotional distress.
54. Defendant violated the NYSHRL by failing to adequately supervise, control, discipline, and/or otherwise penalize the conduct, acts, and failures to act of the defendant as described above.

55. Defendant failed to comply with their duty to take all reasonable and necessary steps to eliminate age discrimination from the workplace and to prevent it from occurring in the future.

56. As a direct and proximate result of defendant's willful, knowing and intentional discrimination against her, Plaintiff has suffered a loss of reputation and will continue and mental anguish and emotional anguish and emotional distress; she has suffered and will continue to suffer a loss of earnings and other employment benefits and job opportunities. Plaintiff is thereby entitled to general and compensatory damages in amounts to be proven at trial. She has incurred and will continue to incur medical expenses for treatment by health care professionals, and for other incidental expenses, and he has suffered and will continue to suffer a loss earnings and other employment benefits and job opportunities. Plaintiff is thereby entitled to general and compensatory damages in amounts to be proven at trial.

FOURTH CAUSE OF ACTION
Retaliation under New York State Human Rights Law, Section 290 *et seq.*

64. Plaintiff repeats and re-alleges by reference each and every allegation contained in the above stated paragraphs, and incorporates the same herein as though fully set forth.

65. Defendant through its agents engaged in a pattern of unlawful age discrimination in violation of the NYSHRL, Section 290 *et. seq.* Plaintiff engaged in protected activity under the ADEA by complaining about her treatment at work and hostile work environment, Plaintiff was placed on a performance improvement plan in retaliation for her complaints, and was given no help or guidance by her supervisor or any other management of defendant.

66. Defendant at all times relevant herein had actual and constructive knowledge of the conduct described above.

67. As a result of the discrimination perpetrated and maintained by defendant and to Plaintiff, and their failure to protect the Plaintiff from discrimination, Plaintiff suffers emotional distress.

68. As a direct and proximate result of defendant's willful, knowing and intentional discrimination against her, Plaintiff has suffered a loss of reputation and will continue and mental anguish and emotional anguish and emotional distress; she has suffered and will continue to suffer a loss of earnings and other employment benefits and job opportunities. Plaintiff is thereby entitled to general and compensatory damages in amounts to be proven at trial.

FIFTH CAUSE OF ACTION
Discrimination in Employment Under Title VII

41. Plaintiff repeats and re-alleges by reference each and every allegations contained in the above stated paragraphs and incorporates the same as though fully set forth herein.
42. Defendants, through its agent, engaged in a continuing pattern of unremedied sex discrimination by subjecting Plaintiff to unwelcome sexual harassment through the creation of a hostile work environment in violation of Title VII of the Civil Rights Act of 1964, as amended. Plaintiff's claims are subject to the continuing violations doctrine.
43. Defendant at all times relevant herein had actual and constructive knowledge of the conduct described herein.
44. The above described unwelcome sexual harassment by defendant's agent created an intimidating, oppressive work environment which interfered with the Plaintiff's well being.
45. As a result of the hostile and offensive work environment, perpetrated and maintained by defendant and their failure to protect the Plaintiff from further harassment, the Plaintiff suffers from severe emotional distress.
46. Defendants violated Title VII of the Civil Rights Act of 1964, as amended, by failing to adequately supervise, control, discipline, and/or otherwise

penalize the conduct, acts and failures to act of the defendants as described above.

47. Defendant failed to comply with their duty to take all reasonable and necessary steps to eliminate sexual harassment from the workplace and to prevent it from occurring in the future.

48. As a direct and proximate result of the defendant's willful, knowing and intentional discrimination against her, Plaintiff has suffered and will continue to suffer pain and suffering and extreme and severe mental anguish and emotional anguish and emotional distress; she has incurred and will continue to incur medical expenses for treatment by health care professionals, and for other incidental expenses, and she has suffered and will continue to suffer a loss of earnings and other employment benefits and job opportunities. Plaintiff is thereby entitled to general and compensatory damages in amounts to be proven at trial.

49. As a further and proximate result of defendant's violations of Title VII of the Civil Rights Act of 1964, as amended, Plaintiff has been compelled to retain the services of counsel in an effort to enforce the terms and conditions of the employment relationship with defendants and each of them, and has thereby incurred and will continue to incur, legal fees and costs, the full nature and extent of which are presently unknown to the Plaintiff. Plaintiff further requests that attorney fees be awarded.

50. Plaintiff is informed and believes, and based thereon alleges, that the outrageous conduct of defendant described above was done with fraud, oppression and malice, with a conscious disregard for her rights, and with the intent, design, and purpose of injuring her. Plaintiff is further informed and believes that defendant authorized, condoned and/or ratified the unlawful conduct alleged herein, specifically. By reason thereof, Plaintiff is entitled to exemplary damages from all defendants in a sum to be adduced at trial.

SIXTH FOURTH CAUSE OF ACTION
Discrimination Under New York State Human Rights Law

51. Plaintiff repeats and re-alleges by reference each and every allegations contained in the above stated paragraphs and incorporates the same as though fully set forth herein.
52. Defendants, through its agent, engaged in a continuing pattern of unremedied sex discrimination by subjecting Plaintiff to unwelcome sexual harassment through the creation of a hostile work environment in violation of The New York State Human Rights Law, ("NYSHRL") Executive Sections 290, *et seq.* This claim does not raise a novel or complex issue of law.
53. Defendant at all times relevant herein had actual and constructive knowledge of the conduct described herein.

54. The above described unwelcome sexual harassment by defendant's agent created an intimidating, oppressive work environment which interfered with the Plaintiff's well being.

55. As a result of the hostile and offensive work environment, perpetrated and maintained by defendants, and each of them, and their failure to protect the Plaintiff from further harassment, the Plaintiff suffers from severe emotional distress.

56. Defendants violated the NYSHRL as amended, by failing to adequately supervise, control, discipline, and/or otherwise penalize the conduct, acts and failures to act of the defendants as described above.

57. Defendant failed to comply with their duty to take all reasonable and necessary steps to eliminate sexual harassment from the workplace and to prevent it from occurring in the future.

58. As a direct and proximate result of the defendant's willful, knowing and intentional discrimination against her, Plaintiff has suffered and will continue to suffer pain and suffering and extreme and severe mental anguish and emotional anguish and emotional distress; and for other incidental expenses, and she has suffered and will continue to suffer a loss of earnings and other employment benefits and job opportunities. Plaintiff is thereby entitled to general and compensatory damages in amounts to be

proven at trial.

60. Plaintiff is informed and believes, and based thereon alleges, that the outrageous conduct of defendant described above was done with fraud, oppression and malice, with a conscious disregard for her rights, and with the intent, design, and purpose of injuring her. Plaintiff is further informed and believes that defendant authorized, condoned and/or ratified the unlawful conduct alleged herein, specifically. By reason thereof, Plaintiff is entitled to exemplary damages from all defendants in a sum to be adduced at trial.

SEVENTH CAUSE OF ACTION
Retaliation Under Title VII

61. Plaintiff repeats and realleges by reference each and every allegations contained in the paragraphs stated above and incorporates the same as though fully set forth herein.
62. Defendants, and each of them, engaged in a pattern of illegal retaliation in violation of Title VII of the Civil Rights Act of 1964 by failing to take any remedial action whatsoever in regards to Plaintiff's complaints of harassment and hostile work environment compelling Plaintiff's constructive discharge.
63. As a direct and proximate result of defendant's willful, knowing and intentional discrimination against her, Plaintiff has suffered and will

continue to suffer severe mental and emotional anguish, and she has suffered and will continue to suffer a loss of earnings and other employment benefits and job opportunities. Plaintiff is thereby entitled to general and compensatory damages in amounts to be proven at the time of trial.

64. As a further and proximate result fo the defendant's violations of Title VII, Plaintiff has been compelled to retain the services of counsel in an effort to enforce the terms and conditions of the employment relationship with defendants and each of them, and has thereby incurred and will continue to incur, legal fees and costs, the full nature and extent of which are presently unknown to the Plaintiff. Accordingly, Plaintiff requests that attorney fees be awarded.

65. Defendants conduct as described herein was malicious and oppressive, and done with a conscious disregard of Plaintiff's rights. The acts were performed with the knowledge of an employers' economic power over its employees. Defendant ratified the unlawful conduct of its employees in this action. Consequently, Plaintiff is entitled to exemplary damages from all defendants.

EIGHTH CAUSE OF ACTION

Retaliation under New York State Human Rights Law, Executive Law § 290 *et seq.*

66. Plaintiff repeats and re-alleges by reference each and every allegations contained in the above stated paragraphs and incorporates the same as though fully set forth herein.
67. Defendants, and each of them, engaged in a pattern of illegal retaliation in violation of New York State Human Rights Law, Executive Law Section 290 *et seq.* by failing to take any remedial action whatsoever in regards to Plaintiff's complaints of sexual harassment compelling Plaintiff's constructive discharge.
68. As a direct and proximate result of defendant's willful, knowing and intentional discrimination against her, Plaintiff has suffered and will continue to suffer severe mental and emotional anguish, and she has suffered and will continue to suffer a loss of earnings and other employment benefits and job opportunities. Plaintiff is thereby entitled to general and compensatory damages in amounts to be proven at the time of trial.
69. Defendants conduct as described herein was malicious and oppressive, and done with a conscious disregard of Plaintiff's rights. The acts were

performed with the knowledge of an employers' economic power over its employees. Defendant ratified the unlawful conduct of its employees in this action. Consequently, Plaintiff is entitled to exemplary damages from all defendants.

DATED: November 10, 2009
Rochester, New York

CHRISTINA A. AGOLA, PLLC

/s/ Christina A. Agola

Christina A. Agola
Attorney for Plaintiff
2100 First Federal Plaza
28 East Main Street
Rochester, New York 14614
(O)585.262.3320
(F)585.262.3325
cagola@agolalaw.com